

CENTER FOR DISABILITY ACCESS
Ray Ballister, Jr., Esq., SBN 111282
Mark Potter, Esq., SBN 166317
Phyl Grace, Esq., SBN 171771
Dennis Price, SBN 279082
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Chris Langer,

Plaintiff,

v.

**Howard Brothers;
Genuine Parts Company,** a
Georgia Corporation; and Does 1-
10,

Defendants.

Case No. '14CV2173 JM DHB

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence**

Plaintiff Chris Langer complains of Defendants Howard Brothers;
Genuine Parts Company, a Georgia Corporation; and Does 1-10
("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side of his van and he has a Disabled Person Parking Placard issued to him by the

1 State of California.

2 2. Defendants are, or were at the time of the incidents, the real property
3 owners, business operators, lessors and/or lessees for the Napa Auto Parts
4 (“Napa”) located at or about 1171 W. Morena Blvd., San Diego, California.

5 3. Plaintiff does not know the true names of Defendants, their business
6 capacities, their ownership connection to the property and business, or their
7 relative responsibilities in causing the access violations herein complained
8 of, and alleges a joint venture and common enterprise by all such
9 Defendants. Plaintiff is informed and believes that each of the Defendants
10 herein, including Does 1 through 10, inclusive, is responsible in some
11 capacity for the events herein alleged, or is a necessary party for obtaining
12 appropriate relief. Plaintiff will seek leave to amend when the true names,
13 capacities, connections, and responsibilities of the Defendants and Does 1
14 through 10, inclusive, are ascertained.

15
16 **JURISDICTION & VENUE:**

17 4. This Court has subject matter jurisdiction over this action pursuant to
18 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
19 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

20 5. Pursuant to pendant jurisdiction, an attendant and related cause of
21 action, arising from the same nucleus of operative facts and arising out of
22 the same transactions, is also brought under California’s Unruh Civil Rights
23 Act, and the California Disabled Persons Act, which acts expressly
24 incorporate the Americans with Disabilities Act.

25 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
26 founded on the fact that the real property which is the subject of this action
27 is located in this district and that Plaintiff’s cause of action arose in this
28 district.

FACTUAL ALLEGATIONS:

7. The Plaintiff went to Napa in May of 2014, to shop.

8. Napa is a facility open to the public, a place of public accommodation, and a business establishment.

9. Parking spaces are one of the facilities, privileges and advantages offered by defendants to their customers at Napa.

10. Unfortunately, although parking spaces are one of the facilities available to patrons of Napa, there is not a single compliant handicap-accessible parking space available for disabled persons.

11. Even though Napa has parking explicitly reserved for its customers, on the south side of its building, there are no handicap-accessible parking spaces reserved for Napa customers who are disabled.

12. Additionally, there is parking on the north side of the building, where Napa has been allotted several parking spaces for use by its customers. Even assuming that all the parking on the north side of the building is available for Napa (it is not; most of the parking is reserved for customers of other businesses in the building), there would not be enough handicap parking for both parking lots.

13. There are about 28 parking spaces located in both parking lots but there is just one handicap-accessible space. There should be two handicap-accessible spaces serving the business.

14. Additionally, on information and belief, plaintiff alleges that a fully compliant handicap-accessible parking space once existed on the south side of the building, where the bulk of Napa's parking spaces are located. However, the previous handicap parking space has either been paved over, has been allowed to fade away, or has been removed from reserved status.

15. Defendants have no policy or procedure in place to make sure that the accessible parking spaces remain useable in the parking lot. As such, the

1 parking space reserved for disabled persons is no longer available for
2 disabled customers.

3 16. The plaintiff personally encountered this problem. This inaccessible
4 condition denied the plaintiff full and equal access and caused him difficulty
5 and frustration.

6 17. Plaintiff would like to return and patronize Napa but will be deterred
7 from visiting until the defendants cure the violation.

8 18. The defendants have failed to maintain in working and useable
9 condition those features required to provide ready access to persons with
10 disabilities.

11 19. Given the obvious and blatant violations, the plaintiff alleges, on
12 information and belief, that there are other violations and barriers on the site
13 that relate to his disability. Plaintiff will amend the complaint, to provide
14 proper notice regarding the scope of this lawsuit, once he conducts a site
15 inspection. However, please be on notice that the plaintiff seeks to have all
16 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
17 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
18 he can sue to have all barriers that relate to his disability removed regardless
19 of whether he personally encountered them).

20 20. Additionally, on information and belief, the plaintiff alleges that the
21 failure to remove these barriers was intentional because: (1) these particular
22 barriers are intuitive and obvious; (2) the defendants exercised control and
23 dominion over the conditions at this location and, therefore, the lack of
24 accessible facilities was not an "accident" because had the defendants
25 intended any other configuration, they had the means and ability to make the
26 change.

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of plaintiffs and against all defendants (42 U.S.C. section 12101, et seq.)

21. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

22. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix “D.”
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by

1 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

2 23. Any business that provides parking spaces must provide handicap
3 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
4 every eight of those handicap parking spaces but not less than one must be a
5 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
6 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six
7 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

8 24. Here, the lack of a handicap-accessible parking space in the south
9 parking lot, which serves Napa, is a violation of the law.

10 25. The defendants have no policy or procedure to make sure that its
11 parking spaces remain useable by disabled persons. The parking space
12 reserved for disabled persons has faded beyond recognition, been paved over
13 or been removed from reserved status.

14 26. Any business that provides parking spaces must provide a sufficient
15 number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010
16 Standards § 208. According to the 1991 Standards, if a parking lot has
17 between 26 and 50 parking spaces, it must have 2 accessible parking spaces.
18 1991 Standards § 4.1.2(5)(a). Under the 2010 Standards, a parking lot with
19 between 26 and 50 spaces, must have 2 accessible spaces. 2010 Standards §
20 208.2 and 1 of them must be van accessible. *Id.* at 208.2.4.

21 27. Here, even if plaintiff assumes that Napa provides parking on both the
22 north side and south side of the building, there is not enough handicap-
23 accessible parking available to Napa customers. There is just one handicap-
24 accessible parking space even though there are 28 parking spaces in all. This
25 is a violation of the law.

26 28. A public accommodation must maintain in operable working
27 condition those features of its facilities and equipment that are required to be
28 readily accessible to and usable by persons with disabilities. 28 C.F.R. §

1 36.211(a).

2 29. Here, the failure to ensure that the accessible parking was available
3 and ready to be used by the plaintiff is a violation of the law.
4

5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH**
6 **CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants)
7 (Cal Civ § 51-53)

8 30. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint.

11 31. Because the defendants violated the plaintiffs' rights under the ADA,
12 they also violated the Unruh Civil Rights Act and are liable for damages.
13 (Civ. Code § 51(f), 52(a).)

14 32. Because the violation of the Unruh Civil Rights Act resulted in
15 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
16 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
17 55.56(a)-(c).)
18

19 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**
20 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and
21 against all defendants) (Cal Civ. § 54-54.8)

22 33. Plaintiff repleads and incorporates by reference, as if fully set forth
23 again herein, the allegations contained in all prior paragraphs of this
24 complaint.

25 34. Because the defendants violated the plaintiff's rights under the ADA,
26 they also violated the Disabled Persons Act and are liable for damages. (Civ.
27 Code § 54.1(d), 54.3(a).)

28 35. Because the violation of the Disabled Persons Act resulted in

1 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
2 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
3 55.56(a)-(c).)

4
5 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of
6 plaintiff and against all defendants)

7 36. Plaintiff repleads and incorporates by reference, as if fully set forth
8 again herein, the allegations contained in all prior paragraphs of this
9 complaint.

10 37. The Defendants had a general duty and a duty arising under the
11 Americans with Disabilities Act and the Unruh Civil Rights Act and
12 California Disabled Persons Act to provide safe, convenient, and accessible
13 facilities to the plaintiffs. Their breach of this duty, as alleged in the
14 preceding paragraphs, has caused injury and damage as alleged above.

15
16 **PRAYER:**

17 Wherefore, Plaintiff prays that this court award damages and provide
18 relief as follows:

19 1. For injunctive relief, compelling defendants to comply with the
20 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
21 Plaintiffs are not invoking section 55 of the California Civil Code and is not
22 seeking injunctive relief under the Disabled Persons Act at all.

23 2. Damages under the Unruh Civil Rights Act and/or the California
24 Disabled Persons Act which damages provide for actual damages and a
25 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
26 acts, simultaneously, and an election will be made prior to or at trial.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

3
4 Dated: July 31, 2014

CENTER FOR DISABILITY ACCESS

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6 By: 

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8 Mark Potter, Esq.
9 Attorneys for Plaintiff
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